

MONTANA LEGISLATIVE HISTORY

Chapter 107 1983

Bill H 481 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) h 2/3 _____ c

✓ 2/3 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) h 3/3 _____ c

✓ 3/3 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 03/28/83
SIGNED: 03/31/83, CHAPTER 314

HB 481 -- PHILLIPS, UNDERDAL, ROUSH, ET AL. -- ALLOWING OFFICERS OF THE UNITED STATES CUSTOMS SERVICE OR IMMIGRATION AND NATURALIZATION SERVICE TO MAKE ARRESTS.

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/3/83
REPORT: 02/03/83, DO PASS
2ND READING: 02/05/83, DO PASS AYES: 88; NAYS: 1
3RD READING: 02/08/83, DO PASS AYES: 99; NAYS: 0

TRANSMITTED TO SENATE: 2/8/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/09/83
HEARING: 3/3/83
REPORT: 03/03/83, BE CONCURRED IN
2ND READING: 03/05/83 AYES: 48; NAYS: 1
3RD READING: 03/08/83 AYES: 43; NAYS: 5

RETURNED TO HOUSE: 3/8/83

TRANSMITTED TO GOVERNOR: 03/15/83
SIGNED: 3/17/83, CHAPTER 107

HB 482 -- HAND -- TO INCLUDE OIL AND GAS FACILITIES IN THE MEANING OF THE TERM "MAJOR NEW INDUSTRIAL FACILITY" FOR THE PURPOSES OF PROPERTY TAX PREPAYMENTS; AMENDING....

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON TAXATION: 01/25/83
HEARING: 2/7/83
DIED IN COMMITTEE

HB 483 -- SPAETH -- PROVIDING THAT AN ACTION BROUGHT IN CITY COURT FOR VIOLATION OF A STATE LAW MAY BE BROUGHT IN THE NAME OF THE CITY OR TOWN; AMENDING ...

INTRODUCED: 01/25/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/25/83
HEARING: 2/4/83
REPORT: 02/08/83, DO PASS
2ND READING: 02/10/83, DO PASS AYES: 81; NAYS: 0
3RD READING: 02/12/83, DO PASS AYES: 99; NAYS: 0

TRANSMITTED TO SENATE: 02/12/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/12/83
HEARING: 3/3/83
REPORT: 03/04/83, BE CONCURRED IN
2ND READING: 03/07/83 AYES: 48; NAYS: 0
3RD READING: 03/09/83 AYES: 50; NAYS: 0

RETURNED TO HOUSE: 03/9/83

TRANSMITTED TO GOVERNOR: 03/15/83
SIGNED: 3/17/83, CHAPTER 108

HB 484 -- FABREGA, BLAYLOCK -- TO CLARIFY THE LAWS PERTAINING TO THE CONSERVATION SPEED LIMIT; AMENDING ...

1 *House* BILL NO. *481*
 2 INTRODUCED BY *Phillips Underdahl* *Reese* *Thompson*
 3 *Salberg* *Don* *Peck* *Bordanone* *Gjarsheim*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFFICERS OF
 5 THE UNITED STATES CUSTOMS SERVICE OR IMMIGRATION AND
 6 NATURALIZATION SERVICE TO MAKE ARRESTS."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Arrest by officer of the United States
 10 customs service or immigration and naturalization service.
 11 An officer of the United States customs service or
 12 immigration and naturalization service may make an arrest
 13 without a warrant if the officer is on duty and one or more
 14 of the following situations exist:

15 (1) A person commits or attempts to commit an offense
 16 in the officer's presence.

17 (2) The officer believes on reasonable grounds that
 18 the person is committing an offense or that the person
 19 committed an offense and the circumstances require his
 20 immediate arrest.

21 (3) The officer believes on reasonable grounds that a
 22 warrant for the person's arrest has been issued in this
 23 state.

24 (4) The officer believes on reasonable grounds that a
 25 felony warrant for the person's arrest has been issued in

1 another jurisdiction.

2 Section 2. Codification instruction. Section 1 is
 3 intended to be codified as an integral part of Title 46,
 4 chapter 6, and the provisions of Title 46 apply to section
 5 1.

-End-

STATUS SHEET

JUDICIARY COMMITTEE

48 Legislature

1 No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
468	To speed the process of final criminal convictions by requiring the dismissal of felony charges not prosecuted in a timely manner.	1/24/83	Rep. Swift	2/4/83	Do Pass, as amended	2/10/83
471	Establishing the position of referee in certain judicial dist.; providing for appointment, qualifications, term & salary of referee, etc.	1/24/83	Rep. Addy	1/31/83	Do pass, as amended	2/10/83
478	Adopting exclusionary rule exception of reasonable good faith belief in the legality of a search and seizure.	1/25/83	Rep. Hannah	2/9/83	Tabled	2/16/83
481	Allowing officers of the United States Customs Service or immigration and naturalization service to make arrests.	1/25/83	Rep. Phillips	2/3/83	Do Pass	2/3/83
483	Providing an action brought in city court for violation of a state law may be brought in the name of the city or town.	1/25/83	Rep. Spaeth	2/4/83	Do Pass	2/8/83
194	Allowing a person making an arrest to bring the arrested person before a judge of the city nearest to the city in which the warrant was issued, if issuing judge absent.	1/25/83	Rep. Hannah	2/9/83	Do Not Pass	2/9/83

MINUTES OF THE JUDICIARY COMMITTEE
February 3, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown. All members were present. Brenda Desmond, Legislative Council, was also present.

HOUSE BILL 433

REPRESENTATIVE MUELLER stated this bill would provide that there would no longer be a challenge for cause on the basis of a debtor-creditor relationship when the relationship arises solely because a prospective juror is a depositor of funds in a bank or similar institution.

This legislation will save the counties money. The only change in the bill is on page 2, lines 4 through 6.

The reason the bill is proposed results from a recent situation in Libby. A Libby bank brought suit against a person. The case called for a jury trial. The judge was required to dismiss a large number of potential jurors because they had funds deposited in the bank in question. In order to have an impartial jury, it was felt that the jurors should not be depositors. This resulted in wasted taxpayers money. EXHIBIT A.

MARC RACICOT was in favor of the legislation. Although the problem does not happen frequently, it does happen often enough to waste taxpayers money. It cost the county \$1,200 to process 100 potential jurors to find 12 that could serve that were not depositors of the bank. Each potential juror receives \$12.00 a day.

REPRESENTATIVE KEYSER stated he was in favor of the bill.

There were no further proponents.

There were no opponents.

REPRESENTATIVE ADDY asked if the bank's attorney objected to jurors that had accounts with the bank. RACICOT replied both sides of the case dismissed potential jurors that had accounts.

The hearing on the bill closed.

HOUSE BILL 430

REPRESENTATIVE HANNAH, sponsor, stated the bill would increase the penalties for violation of laws relating to motor vehicle registration, operation and accident reports.

The penalty is being increased from \$25.00 to \$500 or imprisonment not exceeding six months in the county jail. This brings the law current with other misdemeanor offenses.

Judiciary Committee Minutes
February 3, 1983
Page two

MARCELL TURCOTT, a spokesman for the Montana Magistrates, was in favor of the bill. The problem is not when the first offense is committed, but when it happens continually after that. Judges feel there must be something done to deter this repeated action.

LARRY MAJERUS, Department of Justice, supports the bill. MAJERUS noted that House Bill 560 also deals with provisions on page 3.

There were no further proponents.

There were no opponents.

The hearing on the bill closed.

HOUSE BILL 481

REPRESENTATIVE PHILLIPS, sponsor, stated this bill's purpose is to allow officers of the United States Customs Service or Immigration and Naturalization Service to make arrests. The border patrol check points are staffed with federal officers. Current statute does not state whether they can arrest a person for the state of Montana or for local governing bodies. The federal officers can only arrest people for federal violations. They do this by running a check on a suspected offender through a nationwide computer. The officer is allowed to apprehend the federal offender. If a person is wanted for a local or state crime, legally the federal officer cannot hold the person. His only recourse is to notify local officials of the person's whereabouts.

The bill was drafted by the Attorney General's office. It is modeled after Minnesota and North Dakota statutes.

D.W. MYHRA, representing U.S. Customs, was in favor of the bill. Federal officials have been detaining offenders at the border. An actual arrest is not made. Border officials can be sued for this.

MYHRA noted that when the officials feel someone is "wanted" the officials key the name and car description into the computer. Local law enforcement officials are notified while the person is going through customs.

JOHN SCULLY, Sheriffs & Police, was in favor of the bill. Assistance by the border patrol is needed.

BILL WARE, Montana Chiefs of Police Association, urged the committee to favorably consider the bill.

BOB ASH of Forsyth also showed support of the bill.

There were no further proponents.

There were no opponents.

REPRESENTATIVE VELEBER asked what would be "reasonable grounds" that the officer believes a person has committed an offense. MYHRA responded if the person is carrying weapons, if there is a warrant out for his arrest, if there is an APB out for the person, etc.

REPRESENTATIVE J. BROWN asked what is the difference between a warrant for the person's arrest and a felony warrant. SCULLY replied a warrant would be any warrant that is issued in this state. A felony warrant is one that has been issued from another state for a person charged with a felony. Under this bill, the federal officers are authorized to arrest on an out-of-state warrant only when it is for a felony.

REPRESENTATIVE ADDY asked if the border patrol would be able to search and arrest as a result of a warrant. SCULLY felt they could under federal law. In the event that an individual is picked up through usage of a warrant the official may have more authority than they would otherwise.

REPRESENTATIVE ADDY asked if a party was improperly searched could objects found be used in the trial. SCULLY replied it would depend on the exclusionary rule. If a warrant was issued for dangerous drugs only and that was found, the drugs could be used as evidence.

The hearing on the bill closed.

The committee then went into executive session.

EXECUTIVE SESSION

HOUSE BILL 481

REPRESENTATIVE SEIFERT moved DO PASS, seconded by REPRESENTATIVE IVERSON.

REPRESENTATIVE FARRIS asked why the state of Montana must give authority to federal officials. CHAIRMAN BROWN stated the federal officials as well as the local law enforcement officers would like the border patrol to have the power of arresting individuals that have committed state or local crimes. Currently they only have the power to arrest for federal crimes.

Judiciary Committee Minutes
February 3, 1983
Page four

REPRESENTATIVE IVERSON added the border patrol officials are well trained. Several times they have been asked to help out local officials but have been unable to do so. They can only be responsible for people who have entered the country illegally. Many illegal aliens try to come into the country through the smaller border crossings.

REPRESENTATIVE SCHYE stated they have had problems with this in his area. He totally agrees with the bill.

All were in favor of the bill leaving the committee with a DO PASS recommendation.

HOUSE BILL 433

REPRESENTATIVE CURTISS moved DO PASS, seconded by REPRESENTATIVE EUDAILY.

The motion passed unanimously.

HOUSE BILL 430

REPRESENTATIVE HANNAH moved DO PASS. REPRESENTATIVE EUDAILY seconded the motion.

REPRESENTATIVE ADDY moved to strike "less than \$10 or" on page 3, line 12 of the bill. REPRESENTATIVE JENSEN seconded the motion. All were in favor of the motion.

REPRESENTATIVE JENSEN moved DO PASS AS AMENDED, seconded by REPRESENTATIVE KEYSER.

REPRESENTATIVE BERGENE asked about Section 61-3-601. REPRESENTATIVE HANNAH replied that section deals with penalties for violations. Wherever current statute does not provide for a penalty this section defines what the penalty shall be.

It was asked if the proposed penalty is too steep. The sponsor replied he thought about that. However, he felt the fine is a good preventive measure.

REPRESENTATIVE KEYSER stated committee members who feel judges should not have discretion should vote for the bill. If we are consistent, this is a reasonable approach.

The motion of DO PASS AS AMENDED carried with REPRESENTATIVE IVERSON and CHAIRMAN BROWN voting against the motion.

HOUSE BILL 429

REPRESENTATIVE HANNAH moved DO PASS. He stated the same principle

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 481

DATE 2/3/83

SPONSOR Rep. Phillips

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

STANDING COMMITTEE REPORT

February 3,

83

19.....

MR. **SPEAKER**.....

We, your committee on **JUDICIARY**.....

having had under consideration **HOUSE**..... Bill No. **481**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFFICERS OF THE
UNITED STATES CUSTOMS SERVICE OR IMMIGRATION AND NATURALIZATION
SERVICE TO MAKE ARRESTS."**

Respectfully report as follows: That **HOUSE**..... Bill No. **481**

DO PASS

48th

LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
415	2-8-83	3-22-83	3-22-83					3-22-83	
416	3-2-83	3-22-83	3-22-83						3-22-83
424	2-15-83		REFERRED TO STATE ADMINISTRATION						
427	2-15-83		REFERRED TO STATE ADMINISTRATION						
429	2-9-83	3-11-83	3-11-83					3-11-83	
433	2-9-83	3-3-83	3-3-83				3-3-83		
438	3-2-83	3-18-83	TABLED						
452	2-7-83	2-11-83	2-17-83					2-17-83	
467	2-21-83	3-18-83	3-19-83				3-19-83		
481	2-9-83	3-3-83	3-3-83				3-3-83		
489	2-17-83	3-14-83	3-14-83				3-14-83		
501	2-18-83	3-15-83	3-15-83				3-15-83		
502	2-10-83	3-8-83	3-8-83				3-8-83		
505	3-1-83	3-14-83	3-14-83				3-14-83		
507	2-15-83	3-11-83	3-11-83					3-11-83	
512	2-11-83	3-7-83	TABLED						

(Use Separate Sheet for Senate, House Bills, and Resolutions)

1 ~~House~~ BILL NO. 481
2 INTRODUCED BY ~~Phillips Underdal~~ ~~Ross~~ ~~Penning~~
3 ~~Selberg~~ ~~Don~~ ~~Red~~ ~~Anderson~~ ~~Gardner~~
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFFICERS OF
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22 warrant for the person's arrest has been issued in this
23 state.

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25 felony warrant for the person's arrest has been issued in

1 another jurisdiction.

2 Section 2. Codification instruction. Section 1 is
3 intended to be codified as an integral part of Title 46,
4 chapter 6, and the provisions of Title 46 apply to section
5 1.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1983

The thirty-fourth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 3, 1983 at 10:05 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 433: Representative Mueller, sponsor, advised that the major purpose of this bill is to save counties money. Under the provisions of HB433 a prospective juror could not be disqualified from serving on a jury solely by virtue of the fact that he is a depositor of funds with a financial institution. This is particularly a problem in those areas which are so small that they have few banks. Representative Mueller informed the Committee of a case in Libby and Livingston which resulted in additional expenses to the counties when the majority of the jurors could not be selected because of their relationship with a bank. He also advised that Marc Racicot had testified in favor of this bill before the House committee.

There being no proponents, no opponents, and no questions from the Committee, Representative Mueller closed by stating this is essentially a housekeeping change which would alleviate problems and cause a savings of money to counties.

CONSIDERATION OF HOUSE BILL 481: Representative Phillips, sponsor, advised that this bill would give the U.S. Customs Service and Immigration and Naturalization Services the power to make arrests in Montana for violations of Montana law. The officers employed by these divisions are federal officers, but currently the statutes do not give them the authority to make arrests while on duty.

PROPOSERS: Donald Myhra, District Director of the U.S. Customs Service for the Great Falls District, testified in favor of the bill and submitted his written testimony (see attached Exhibit "A").

Paul Hayes, representing the U.S. Immigration and Naturalization Service, testified in favor of the bill. He stated that all officers receive extensive training in criminal and civil law, along with law enforcement training, and are therefore qualified to make arrests (see attached statement marked as Exhibit "B").

John Scully, representing the Montana Sheriff and Peace Officer's Association, voiced his support for this legislation.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

The Committee questioned if the officers now have the power to detain a person. They were advised that the officers do not and that it is now necessary for them to "play a game" of continuing to process a persons entry into the country in order to detain the person at the border until an officer with the power to arrest can arrive. It was noted that this is a severe problem in those places where the law enforcement must come from hundreds of miles away.

Senator Galt questioned if the officers now have the power to arrest for violations of federal law and was advised that they do.

Senator Berg questioned if the officers themselves are in support of this bill and he was advised that they are. It was noted that Sheriff O'Reilly was present and favored the bill.

There being no further questions, the hearing was closed.

CONSIDERATION OF HOUSE BILL 417: Representative Metcalf advised that he was sponsoring this bill at the request of the Board of Pharmacists. It is their feeling that the list of controlled substances contained in state law should be updated to conform with controlled substances listed in the Code of Federal Regulation.

PROPOSERS: Warren Amole, representing the State Board of Pharmacists, testified in favor of the bill and submitted his written testimony (see attached Exhibit "C"). He especially encouraged the adoption of HB417 as many drug possession cases use the defense that the Board has delegated its authority to schedule drugs to the federal government.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan questioned why the list of controlled substances was not automatically updated. He was advised that the Administrative Code Committee stated this could not be done and the current lists have not been updated since 1973.

Senator Mazurek questioned if any convictions had been overturned since we do not have the updated list in our statutes. He was advised that none have been, but this defense keeps arising.

Counsel advised the Committee that the Supreme Court has found that the legislature cannot delegate authority to adopt federal regulation as they may be amended from time to time.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 481: The Committee agreed that federal officers have a practical problem. Senator Mazurek questioned if we risk potential liability to the state by enacting this law. The Committee felt the liability would be on the officer. Counsel advised that conceivably the officer already has the power to make an arrest. The Committee felt the enactment of HB481 would eliminate any question of the officer's authority. Senator Daniels moved HB481 BE CONCURRED IN. This motion carried with Senators Berg and Crippen voting in opposition.

CONSIDERATION OF HOUSE BILL 130: Representative Stobie, sponsor, turned the hearing over to the witnesses to present their material supporting this bill.

PROPOSERS: Sheriff Chuck O'Reilly of Lewis and Clark County and also representative for the Montana Sheriff and Peace Officer's Association, read a letter from the Criminal Investigation Bureau of the Department of Justice which enumerated the reasons for passage of this bill (see attached Exhibit "D"). There is currently a wide-spread problem with the sale of look-alike drugs through the mail. Sheriff O'Reilly displayed imitation cross-tops and black beauties, along with mail-order advertisements promoting these drugs (see Exhibit "E"). The urgent problem with these drugs is that they are popular among the junior high and grade school children. Since they are not as potent as their controlled counterparts, the children take two and three times as many to obtain the same effects. When they are then introduced to the real drug, they continue taking two and three times as many which consequently causes severe overdoses and sometimes death.

Nick Rotering, an attorney for the Department of Institutions, supported the bill from a treatment standpoint. He emphasized the need to control these types of drugs as abuses of these drugs can be very dangerous.

Jerry Loendark, representing the Montana Medical Association, advised that he has worked with many young people who take these types of substances and strongly urged the Committee to give the bill favorable consideration.

Vern Sloulin, representing the State Department of Health, testified in favor of the bill and advised that 36 states currently have laws relating to look-alike drugs. He advised that the F.D.A. strongly encourages each state to adopt their own laws relating to these drugs.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

EXHIBIT "A"
March 3, 1983

March 3, 1983

STATEMENT: MONTANA PEACE OFFICER STATUS

TO: CHAIRMAN & COMMITTEE MEMBERS, SENATE JUDICIARY COMMITTEE

On behalf of the United States Customs Service I am happy to have this opportunity to express my concern and interest in attaining Senate passage and final enactment of legislation to establish Peace Officer status in Montana for United States Customs and Immigration and Naturalization Service officers when they are on duty.

The primary need for passage of this legislation is to eliminate the gap which is now present in coordinated enforcement efforts among U.S. Customs and INS, state and local enforcement agencies in the State of Montana. That gap or breakdown is due to the fact that our officers do not have the authority to legally detain, hold, or arrest a wanted person even though there is reasonable cause to believe that a local or state warrant for arrest exists.

Basically this creates a really bad situation potentially resulting in one or the other of the following:

1. Our officer detains the wanted party without actual authority, leaving the officer open to later litigation action (civil suits) or
2. The wanted person is released to "hit the road".

The passage of Montana Peace Officer status for Customs and INS officers is long overdue and becomes more critical as our Treasury Enforcement Communications System (TECS) data base grows.

We presently have 15 border ports and stations in Montana where arriving persons are processed. Further, we have 7 other inland locations, airports and ports of entry, where arriving persons are processed.

Donald W. Myhra

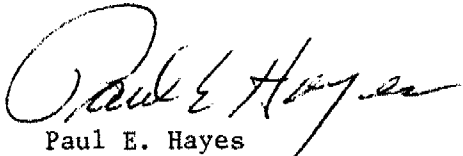
Donald W. Myhra
District Director, Great Falls, Montana

EXHIBIT "B"
March 3, 1983

STATEMENT: Montana Peace Officers Status

On behalf of the United States Immigration and Naturalization Service I would like to express my concurrence with the statement submitted by Mr. Myhra, the District Director of U.S. Customs Service.

I would like to add that all officers of both Services are extensively trained in law enforcement procedures including arrest and detention of violators of Federal Laws and I anticipate no problems with officers acting within the scope of authority that the enactment of this legislation would provide.

A handwritten signature in cursive script, reading "Paul E. Hayes".

Paul E. Hayes
Acting District Director
U.S. Immigration & Naturalization Service
Helena, MT

STANDING COMMITTEE REPORT

March 3, 19 83

PRESIDENT

MR.

Judiciary

We, your committee on

House

having had under consideration Bill No. **481**

Phillips (Daniels)

House

Respectfully report as follows: That Bill No. **481**

third reading bill,

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

210

1 HOUSE BILL NO. 481
2 INTRODUCED BY PHILLIPS, UNDERDAL, ROUSH, KENNERLY,
3 SOLBERG, IVERSON, PECK, BARDANOUVE, G. JACOBSEN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFFICERS OF
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23 warrant for the person's arrest has been issued in this
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